IN THE MATTER OF THE DEPENDANTS OF LOW LIOK, DECEASED

[O.C.J. (Mills J.) March 23, 1936]

[Johore Bahru Originating Summons No. 19 of 1936]

Workmen's Compensation — Death of employee — Deposit of compensation by employer with Commissioner — Absence of claims — Period of limitation — Workmen's Compensation Enactment, ss.10(i)(xi), 12(i).

Where, after the death of a workman, his employer deposited with the Commissioner the full amount of compensation payable and at the Commissioner's inquiry, it was proved that the deceased had no dependant other than the workman's widow, to communicate with whom several attempts were unsuccessfully made, no claim having been put forth, the insurers applied to the Court for a return of the deposit.

Held: that, if after a lapse of reasonable time, and in this case 12 months from the date of the workman's death no claim is forthcoming, the Commissioner may repay the deposit to the employer.

ORIGINATING SUMMONS.

On the 14th May, 1935, one Low Liok, a workman employed by a contractor, Then Nam Sin, was killed in an accident in the course of his employment. On the 15th June, 1935 Then Nam Sin, through his insurers, deposited with the Commissioner for Workmen's Compensation, pursuant to the provisions of section 10(i) of the Workmen's Compensation Enactment, a sum of $810.00, being the full amount of compensation payable. On the 20th June, 1935, the Commissioner held an enquiry under section 10(vi) of the Enactment. The only witness at the said enquiry [162] was the employer, Then Nam [162] Sin. From the evidence given by him it appeared that on behalf of the workman he had made remittances, at irregular intervals during the past three years, to the workman's wife in China. He stated that he knew the widow, as she had formerly lived with the workman in this country, but that he was unaware of any other dependants. Several attempts were made to communicate with the widow in China without success, and no claimant being forthcoming the insurers applied for a return of the deposit.

Section 10(xi) of the Enactment provides that "If the Commissioner is satisfied after such enquiry as he may deem necessary that no dependant exists he shall repay the balance of the money to the employer by whom it was paid." The Commissioner, not being satisfied that no dependant existed applied to the Court for directions as to the lawful method of disposing of the deposit in his hands. Neither the employer nor his insurers appeared on the hearing of the application.

Weiss, the Commissioner, referred to section 12(i) of the Enactment which provides that no compensation for an accident resulting in death shall be recoverable unless a claim is made within six months of the death; and to the proviso (c) which provides that the failure to make a claim within the period above specified shall not be a bar to the maintenance of proceedings if it is found that the failure was occasioned by mistake, absence from the State or other reasonable cause. Reference was also made to the corresponding provisions in the English Act whereby the period of six months is made to run from the date of the dependant's notice of the death. No guidance however could be obtained from the English Act as there is no provision therein for the making of any deposit. It was submitted that there was nothing applicable, either in the rules relating to funds deposited in Court, or in the law of limitation regarding a claim to a legacy or to a distributive share in an intestate estate.

Mills J. in an oral decision given in Chambers held that a dependant ought ordinarily to be imputed with knowledge of the death of the workman after the lapse of a reasonable time; that six months was a reasonable time; and that a dependant should be nonsuited for laches if no claim were made within six months thereafter.

An order was made accordingly that the deposit be held by the Commissioner until the expiration of a period of twelve months from the date of the death of the workman, and that if no claim thereto should then have been made, the Commissioner should be at liberty to repay the deposit to the employer.

Order accordingly.

---

[163] PRIVY COUNCIL REPORTS [163]

CENTRAL BANK OF INDIA, LTD. v. GUARDIAN ASSURANCE CO., LTD.

[P.C. (Lords Atkin, Alness and Maugham) March 20, 1936]

[Privy Council Appeal No. 26 of 1934]

Insurance — Loss by fire — Claim — Proof — Circumstantial evidence — Practice — New plea — Issue or objection abandoned or not raised in Lower Courts.

Claims for compensation for loss by fire, like certain other claims against insurance companies, cannot in general be tested and disproved otherwise than by circumstantial evidence.

The Board will not consider an issue or objection which has been abandoned or not raised in the Lower Courts. *Lingangowda* v. *Basangowda,* (1927) 54 I.A. 122; *Udyma Lebbe Ahamath* v. *Levena Marikar,* [1931] A.C. 799; *Skinner* v. *Bank of Upper India* (1935) 62 I.A. 115 followed.

PRIVY COUNCIL — Appeal from the High Court, Lahore, India.

A. J. Miller, W. Wallach and *Miss A. Mehta* for the appellants.

Fergus S. Morton, David Davies and *L. M. Jopling* for the respondents.

Cur. Adv. Vult.

The judgment of the Board was delivered by —

Lord Maugham: This is an appeal from a decree of the High Court of Judicature at Lahore, dated 20th May, 1932, which reversed a decree of the subordinate Judge of Lahore, dated 16th July, 1929, and dismissed the plaintiff's suit with costs. The decree was made in an action commenced by plaint, dated 21st December, 1927, brought by the appellants, the Central Bank of India, Limited, and Rustomji (called in what follows Seth Rustomji), a nominal respondent to this appeal against the Guardian Assurance Company, Limited, on certain policies of insurance whereby the plaintiffs (or one of them) were insured against loss by fire. The insurance related to a stock of wheat, wheat products and gunny bags stored in certain godowns of mills which belonged to Seth Rustomji. The buildings and the stock were charged or hypothecated to the present appellants called hereafter the Central Bank. Seth